PATHOLOGY CLAIMS EXPERIENCE

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In its role as a consultant to the claims services of the three branches of the military over the past 20 years, the Department of Legal Medicine has accumulated one of the largest collections of medical malpractice cases in the world. This library of over 5,300 claims is perhaps unique in that copies of the relevant medical records, x-rays, fetal heart tapes, pathology slides, etc., are maintained.

As part of our redefined mission, we are taking the opportunity to focus on particular medical specialties' involvement in those cases. In one such study, claims involving pathologists are being identified by physicians who personally evaluated each record in our files. This became necessary because the database created by non-physician coding identified less than one-third of the relevant claims.

Thus far, we have found 139 cases out of a total of 5,354 (a rate of 2.6%) which have alleged substandard practice of pathology on the part of military providers, their consultants or contract civilian pathologists. This rate is only slightly higher than the ratio of Department of Defense (DoD) pathologists to all medical practitioners DoD-wide (1990 figure-339 pathologists out of 13,815 corresponding to 2.45%). Fifty-three percent of the claims arose from tertiary hospitals or referral centers (the Armed Forces Institute of Pathology and the National Institutes of Health). Females were twice as likely to be the source of the claims as males. A large portion of this discrepancy could be due to the policy which prohibits active duty members from recovering for medical malpractice claims (the Feres Doctrine). This policy does not apply to spouses or dependents.

The breakdown of the claims into anatomic versus clinical pathology (laboratory medicine) is nearly even (Table 1). The largest single category of cases deals with the provision of transfusion services, accounting for over one-third of the total number. This aspect of the average practicing pathologist's responsibility probably involves the least amount of direct participation. More time should be invested in training laboratory staff in blood banking protocols, especially the part-time technician who only rarely does blood-typing. Pathologist oversight is mandatory.

Anatomic Pathology	72
Clinical Pathology	67

TABLE 1

Failure to detect abnormalities on cervical cytology was the most common error alleged in anatomic pathology (Table 2). This was followed closely by errors in interpreting histologic specimens from the breast, skin and gastrointestinal tract. Because these tissues represent the bulk of those submitted for interpretation, their predominance in pathology malpractice claims is to be expected.

ANATOMIC PATHOLOGY
ORGAN SITES

Cervical Cytology	19	Muscle/Soft Tissue	2
Breast	17	Hematopoietic	2
Skin	13	Chest, Mediastinum	2
Stomach	7	Thyroid	1
Bone	4	Liver	1
Lung, Pleura	4	Prostate	1
Cervix	3	Ovary	1
ENT	3		

TABLE 2

In light of military medicine's anticipated shift to a "managed care" approach, it should be noted that nearly half of the claims alleging Papanicolaou smears were misread involved slides that were "farmed out" under a civilian contract. The substandard quality of the contracted service was not detected for several years and required a massive additional effort to identify those women who were potentially adversely affected.

Pathologists often express concern that they may be "over-reading" cytology specimens. Our results do not support such a conclusion. Only one claim involved a pathologist's opinion that the cytology indicated a malignancy which was not later found. All other cytology errors were for nondetection of malignancy (Table 3).

CYTOLOGY ERRORS

INITIAL READING	FINAL DIAGNOSIS	N
Malignant	Benign	1
Benign	Malignant	19*

*One case missed twice.

TABLE 3

Errors classifying malignant histologic samples as "benign" were twice as common as inaccurate initial interpretations of the presence of a tumor in normal tissue. Several cases involved inappropriate therapy rendered after a malignancy was incorrectly classified by histologic type.

A disturbing type of claim involves the failure on the part of the pathologist to notify the attending physician or the patient of an abnormal histologic finding. While procedures are generally in place to directly contact a physician caring for someone with a "panic" level on a blood chemistry test, the same is not true when a malignancy is found. Failures of this kind occur in both the military and civilian sectors when biopsy results are incorporated into the patient's chart after discharge from the hospital. Patient data (results) should not be appended to a chart/record without a responsible physician being notified. The frequent relocation of military health care providers, as well as service families who have received care, magnifies this problem in armed forces treatment facilities.

When our study is completed, comparisons will be made with civilian data. Insurance carriers have been contacted, and several have indicated a willingness to share their experience with regard to pathology claims.